

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL ACTION NO.
	:	1:06-CR-0392-JOF
UBALDO LUNA-ROMANE,	:	
	:	
Defendant.	:	

**OPINION AND ORDER**

In February 2007, this court sentenced Petitioner Ubaldo Luna-Romane to sixty-five months in prison for illegally entering the United States. The Eleventh Circuit Court of Appeals upheld this sentence. This court denied Petitioner’s subsequent requests for post-conviction relief styled as a motion for reduction in sentence [36] and a motion for reconsideration [39]. Petitioner appealed arguing that the court incorrectly denied his “motion for reconsideration” because it did not allow him an evidentiary hearing. On June 23, 2008, this court denied Petitioner’s motion to proceed *in forma pauperis*. The undersigned found that Petitioner had no argument in law or in fact that this court’s denying his motion for reconsideration was incorrect because he was entitled to an evidentiary hearing and as such Petitioner’s ground for appeal was frivolous and the appeal itself was not taken in good faith. This court neglected to explicitly address whether Petitioner was entitled to a certificate of appealability (“COA”).

In order to appeal, Petitioner must obtain a certificate of appealability from this court. In order to obtain a COA, a petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Barefoot v. Estelle*, 463 U.S. 880, 892 (1983). “In order to succeed on his motion, Petitioner must demonstrate that the issues he desires to appeal ‘are debatable among jurists of reason, that a court could resolve the issues [in a different manner]; or that the questions are ‘adequate to deserve encouragement to proceed further.’” *Barefoot*, 463 U.S. at 893, n.4 (citations omitted). *See also Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). For the reasons stated in its June 23, 2008 order addressing Petitioner’s *pauperis* status, this court finds that Petitioner’s claims are not “debatable among jurists of reason” and DENIES Petitioner a COA.

SO ORDERED, this 16<sup>th</sup> day of September 2008.

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s/ J. Owen Forrester  
J. OWEN FORRESTER  
SENIOR UNITED STATES DISTRICT JUDGE